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7590

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EXAMINER

LUGO, CARLOS

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 11/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/067,824

Applicant(s)

HURL, JAN M.

Examiner

Carlos Lugo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/8/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9,10,13 and 15 is/are rejected.
- 7) ☒ Claim(s) 7,8,11,12,14 and 16-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

- Elements 17,35 and 61 are not illustrated in the drawings.

2. The drawings are objected to because:

- Element 53 in Figure 1 is not pointing any structure.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

- The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 2-10 are rejected** under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 2 and 3 recites the limitation “thick rim” around the flat body and at the U-shaped opening. The specification fails to disclose the purpose of these rims in this type of locking mechanism.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. **Claim 13 is rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "the cylindrical extensions" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the guide lugs" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claim 1 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,318,333 to Dreifert in view of US Pat No 5,582,445 to Olsen et al. (Olsen).

Dreifert discloses a casement window operator apparatus comprising a housing having a main body (10) and a cover (11).

A sliding tongue (23) is fitted between the cover and the main body. The sliding tongue includes an extension that includes a U-shaped opening (29) for engaging a connector (22) on a window-moving linkage (20). The main body is connected to a lever (13).

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However, Dreifert fails to disclose that the apparatus is made of a plastic polymer.

Olsen teaches that is known in the art to have a casement window operator apparatus (10) made of a plastic polymer polymeric (Col. 4 Lines 25-36).

Applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the level of skill of one skilled in the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an apparatus made of a plastic polymer, as taught by Olsen, into a latch as described by Dreifert, because it is consider as a design choice that will not affect the locking mechanism.

9. **Claim 2,3,6,9,10 and 15 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,318,333 to Dreifert and US Pat No 5,582,445 to Olsen et al. (Olsen) in view of US Pat No 296,402 to Goforth.

Regarding claims 2 and 3, Dreifert, as modified by Olsen, fails to disclose that sliding tongue includes a thick rim at the U-shaped opening and a thick rim around the flat body. Dreifert discloses that the sliding tongue includes a flat body.

Goforth teaches that is known in the art to have a thick rim at a U-shaped opening (where element a is located) and a thick rim around a flat body of a lock mechanism for a window (Figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a thick rim, as taught by Goforth, into a locking

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mechanism as described by Dreifert, as modified by Olsen, in order to have a better engagement between the U-shaped opening and the connector of the window-moving linkage.

As to claim 6, Dreifert discloses that the flat body includes an oval groove (33) having an oval rim (42).

As to claim 9, Dreifert discloses that the lever (13) has a flat shaped handle (at 54), a cylindrical bearing portion (31) and an actuator arm (30).

As to claim 10, Dreifert discloses that the cylindrical bearing has a recess to accept a plastic bearing ring (15).

Claim 15 is a combination of claims 1-6 that were rejected as disclosed above.

**10. Claim 1 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,450,554 to Rotondi et al (Rotondi) in view of US Pat No 5,582,445 to Olsen et al. (Olsen).

Rotondi discloses a casement window operator apparatus (10) comprising housing having a main body (50) and a cover (68).

A sliding tongue (30) is fitted between the cover and the main body. The sliding tongue includes an extension that includes a U-shaped opening (32) for engaging a connector on a window-moving linkage. The main body is connected to a lever (112).

However, Rotondi fails to disclose that the apparatus is made of a plastic polymer.

Olsen teaches that is known in the art to have a casement window operator apparatus (10) made of a plastic polymer polymeric (Col. 4 Lines 25-36).

Applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the level of skill of one skilled in the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an apparatus made of a plastic polymer, as taught by Olsen, into a latch as described by Rotondi, because it is consider as a design choice that will not affect the locking mechanism.

**11. Claims 2-5 and 11 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,450,554 to Rotondi et al (Rotondi) and US Pat No 5,582,445 to Olsen et al. (Olsen) in view of US Pat No 296,402 to Goforth.

Regarding claims 2 and 3, Rotondi, as modified by Olsen, fails to disclose that sliding tongue includes a thick rim at the U-shaped opening and a thick rim around the flat body. Rotondi discloses that the sliding tongue includes a flat body.

Goforth teaches that is known in the art to have a thick rim at a U-shaped opening (where element a is located) and a thick rim around a flat body of a lock mechanism for a window (Figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a thick rim, as taught by Goforth, into a locking mechanism as described by Rotondi, as modified by Olsen, in order to have a better

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engagement between the U-shaped opening and the connector of the window-moving linkage.

As to claim 4, Rotondi discloses that the flat body includes wings (130) and guide lugs (108) extending from the wings.

As to claim 5, Rotondi discloses that the flat body further includes cylindrical guides (160a and 162) extending from it, opposite from the guide lugs.

**12. Claims 6,9,10 and 15 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,450,554 to Rotondi et al (Rotondi) in view of US Pat No 5,318,333 to Dreifert and US Pat No 5,582,445 to Olsen et al. (Olsen).

Regarding claim 6, Rotondi, as modified by Olsen, fails to disclose that the flat body includes an oval groove having an oval rim. Rotondi discloses that the flat body includes a groove (62).

Dreifert teaches that is known in the art to have a flat body with an oval groove (33) having an oval rim (42).

Applicant is reminded that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a groove, as taught by Dreifert, into a locking mechanism as described by Rotondi, as modified by Olsen, because it is considered as a design choice that will not affect the movement of the sliding tongue.



As to claim 9, Rotondi discloses that the lever (112) has a flat shaped handle, a cylindrical bearing portion (60) and an actuator arm (58).

As to claim 10, Rotondi discloses that the cylindrical bearing has a recess to accept a plastic bearing ring (56).

Claim 15 is a combination of claims 1-6 that were rejected as disclosed above.

***Allowable Subject Matter***

**13. Claims 7,8,11,12,14 and 16-19 are objected** to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**14. Claim 13 would be allowable** if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

**15.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents cited further show the state of the art with respect to casements windows operator apparatus.


**16.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo. The examiner phone number is (703)-305-9747. The fax number for correspondence before a final action is (703)-872-9326 and the fax number for correspondence after final action is (703)-872-9327. The email direction of the examiner is carlos.lugo@uspto.gov. The examiner can normally be reached on Monday to Friday from 9:30am to 6:30pm (EST). If the

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examiner is not available, please leave a message, including the application number and the examiner will answer the message as soon as possible.

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November 6, 2002



ROBERT J. SANDY  
PRIMARY EXAMINER